



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,991	06/20/2001	Bruce H. Levin	10527/11	5652

23838 7590 11/26/2002

KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON, DC 20005

EXAMINER

SCHOPFER, KENNETH G

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 11/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/883,991	Applicant(s) LEVIN, BRUCE H.	
	Examiner Kenneth G Schopfer	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59, 61, 62, 64 and 65 is/are pending in the application.
- 4a) Of the above claim(s) 1-48, 64 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49-59, 61 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 49-59, 61, and 62 regarding medical labels in Paper No. 5 is acknowledged. The amendment has altered the claims such that there are now three inventions:

- I. medical products and monitoring of medical products in claims 1-43, 64, and 65;
- II. a system for monitoring patients in claims 44-48; and
- III. labels in claims 49-59, 61, and 62.

No arguments were made with regards to the election with traverse.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 49-59, 61, and 62 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. A medical label including an integrated circuit is claimed, but the structure of the label is not sufficiently described in the specification to allow one to make or use the device. Further, the label is described as being flexible, shock resistant, water resistant, and temperature resistant without disclosing the structure or materials that would give it these properties.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3739

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 61 and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 61 recites the limitation "the medically or logistically relevant data" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. The claim was amended to depend from claim 55, which includes no recitation of such "data".

7. Claim 62 recites the limitation "the blood product label" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 55 was amended and no longer includes "a blood product label".

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 49-55, 59, and 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Momich et al. (USPN 6335907).

10. Referring to claims 49-55, 59, and 61, Momich et al. teach all of the limitations of these claims. Momich et al. teach a flexible medical label including an integrated circuit 14 that uniquely identifies a medical product to which it is attached (figure 15). The medical product

could be a pharmaceutical container, e.g. a bottle, or a blood product. The integrated circuit contains logistically relevant data such as logistical information including medication verification and dosage time (see abstract).

11. Claims 56-58 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Momich et al. (USPN 6335907).

12. Referring to claim 56, Momich et al. teach all of the limitations of this claim as described above except for the label being temperature resistant. It would have been obvious to one of ordinary skill in the art at the time of invention to make the label of Momich et al. temperature resistant in order to ensure that the integrated circuit is not damaged by changes in temperature.

13. Referring to claim 57, Momich et al. teach all of the limitations of this claim as described above except for the label being water resistant. It would have been obvious to one of ordinary skill in the art at the time of invention to make the label of Momich et al. water resistant in order to ensure that the integrated circuit is not damaged by water.

14. Referring to claim 5~~8~~⁷, Momich et al. teach all of the limitations of this claim as described above except for the label being shock resistant. It would have been obvious to one of ordinary skill in the art at the time of invention to make the label of Momich et al. shock resistant in order to ensure that any shocking forces do not damage the integrated circuit.

15. Referring to claim 62, Momich et al. teach all of the limitations of this claim as described above except for the blood product container including the label. It would have been obvious to one of ordinary skill in the art at the time of invention that a blood product container could use a label as in Momich et al. to include relevant data about the container and its contents.

Conclusion

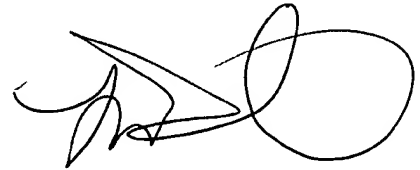
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth G Schopfer whose telephone number is 703-305-2649. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


KS

November 21, 2002



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700